

Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C.

MAY 15 1986  
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In the Matter of: )  
)

1984 JUKEBOX ROYALTY )  
DISTRIBUTION PROCEEDINGS )  
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Docket No. 85-1-84JD

JOINT EVIDENTIARY STATEMENT OF  
THE AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS, BROADCAST  
MUSIC, INC. AND SESAC, INC.

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Dated: May 15, 1986

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COPYRIGHT ROYALTY TRIBUNAL  
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JOINT EVIDENTIARY STATEMENT OF  
THE AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS, BROADCAST  
MUSIC, INC. AND SESAC, INC.

The American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI") and SESAC, Inc. (collectively, the "Settling Parties") hereby file a joint evidentiary statement, in accordance with the Copyright Royalty Tribunal's declaration of controversy in this matter. 50 Fed. Reg. 47794 (November 20, 1985).<sup>1</sup>

We are setting forth in this statement the documentary evidence supporting our joint claim of entitlement. Should the Tribunal hold an oral evidentiary hearing, we anticipate that the Tribunal will issue a schedule pursuant to which we (and the other claimant, ACEMLA) shall specify the

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<sup>1</sup> As we informed the Tribunal in our Justification of Claim dated November 1, 1985, ASCAP, BMI and SESAC have reached voluntary agreement pursuant to 17 U.S.C. §116(c)(2).

witnesses who will testify, and submit written witnesses' statements, in accordance with the Tribunal's practices in prior jukebox and cable royalty distribution proceedings. See, Tribunal's Order of April 18, 1986.

In addition, we note that, if the Tribunal again determines that ACEMLA is not a "performing rights society" as defined by 17 U.S.C. §116(e)(3), as it found in the consolidated 1982 and 1983 jukebox distribution proceedings, the Tribunal will not be required to weigh the affirmative evidence of our entitlement set forth in this statement. 1982 (Remand) and 1983 Jukebox Royalty Distribution Proceedings -- Final Determination, 50 Fed. Reg. 47577, 47582 (November 19, 1985); see, Settling Parties' Motion for Procedural Ruling, dated February 17, 1986.

Our evidence is as follows:

I. INCORPORATION OF PRIOR RECORDS

We hereby incorporate the entire records (including documentary evidence, written statements and oral testimony) of the Tribunal's prior jukebox distribution proceedings, as follows:

- 1979 Jukebox Royalty Distribution Proceeding  
(Docket No. 80-5)
- 1980 Jukebox Royalty Distribution Proceeding  
(Docket No. 81-4)

- 1981 Jukebox Royalty Distribution Proceeding (Docket No. 82-3)
- 1982 Jukebox Royalty Distribution Proceeding (Docket No. 83-2)
- 1982 (remand) and 1983 Consolidated Jukebox Royalty Distribution Proceedings (Docket Nos. 83-2 and 84-2-83JD)

II. EVIDENCE FROM PRIOR PROCEEDINGS  
OF THE STRENGTH OF THE ASCAP, BMI  
AND SESAC REPERTORIES GENERALLY

We particularly highlight the following affirmative evidence of our joint entitlement from the consolidated 1982 and 1983 jukebox distribution proceedings, which relates to the strength of our combined repertories generally:

- Written statement, pp. 1-4, and oral testimony, Tr. 26-28, of Gloria Messinger on strength of our combined repertories generally.
- Oral testimony, Tr. 150-51, 160, of Alan Smith on strength of our combined repertories generally.
- Written statement, pp. 2-4, and oral testimony, Tr. 114-20, of Paul Adler on strength of our combined repertories generally.
- Written statement, p. 3, and oral testimony, Tr. 27, of Gloria Messinger on combined annual performing rights licensing revenues of ASCAP, BMI and SESAC.
- Billboard trade charts showing that 100%, or virtually 100%, of the works listed were in the ASCAP, BMI and SESAC repertories, A/B/S Exhs. 2 and 3, Tr. 115-6.
- RePlay jukebox trade charts showing that 100% of the works listed were in the ASCAP, BMI and

SESAC repertories, A/B/S Exhs. 3 and 4, Tr. 119.

III. NEW EVIDENCE OF THE STRENGTH OF THE ASCAP,  
BMI AND SESAC REPERTORIES GENERALLY

In addition to the evidence in the records of prior proceedings, we offer the following new affirmative evidence of our entitlement:

A. 1984 Jukebox Performances

During calendar year 1984, ASCAP and BMI made 200 "inspections" of establishments where jukeboxes were located, for the purpose of determining whether infringing performances of copyrighted works in the respective society's repertory occurred. Written reports of these inspections were used as evidence in lawsuits for copyright infringement, in those instances where such lawsuits were brought.

The general procedures followed in conducting these inspections were as follows.<sup>2</sup> In some cases, licensing representatives of ASCAP or BMI would identify jukebox operators who had not complied with the compulsory license provisions of the Copyright Act for 1984, and find establishments where

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<sup>2</sup> ASCAP and BMI conducted their inspection operations independently. Accordingly, the details of the procedures followed by the two performing rights societies differed in certain respects. However, in general outline, the procedures followed were the same. Of course, given the competitive posture of ASCAP, BMI and SESAC, this filing may not be taken as an endorsement of any society's inspection procedures by the other societies.

their jukeboxes were located. In others, the licensing representatives would first locate jukeboxes which did not bear a valid 1984 Copyright Office certificate, and subsequently determine the identity of the operator. In either event, after locating the particular jukebox in question, one or two individuals would enter the establishment at a time when the jukebox was likely to be played by customers, and list every musical composition performed during the time they were present, as those compositions were performed.<sup>3</sup>

It is important to stress that only the specific works actually performed on the jukeboxes in question during the hours when the inspections were made were listed. All works actually performed were listed. Works which were available for performance on the jukebox, but were not actually performed, were not listed.<sup>4</sup>

These inspections were made, and the performances logged, in the normal course of business, and are part of the normal business records kept by ASCAP or BMI. They were made long before any controversy was declared in this proceeding, and for purposes wholly unrelated to this proceeding -- they

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<sup>3</sup> Of course, the individuals conducting the inspections were under strict instructions not to play any songs on the jukebox.

<sup>4</sup> In a few cases, the works available but not performed were separately listed. These separate listings of unperformed works were not analyzed.

were made solely to obtain evidence for possible infringement litigation. There was no intent, at the time they were made, that they would be used as evidence in this or any similar proceeding.

Finally, the only basis for conducting an inspection of a jukebox, and logging its performances, was the belief that the jukebox was not licensed. The jukeboxes inspected were chosen without any consideration of whether they contained works in the repertory of any particular claimant in these proceedings -- including the performing rights society making the inspection.

We have tallied the listings of all works performed on 159 of the 200 inspections conducted in 1984 which could be analyzed by the due date of this statement.<sup>5</sup> These inspections logged 4,363 performances of copyrighted works.

The results, set forth in Exhibit 1, show that 99.75% of all works performed on these jukeboxes were licensed by ASCAP, BMI or SESAC. Only 0.25% of the works performed could not be so identified.

The latter works, whose ownership is not identifiable, may well be in our repertories; we simply have no record

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<sup>5</sup> We are continuing to analyze the remaining 41 inspections which were conducted. When the results of that analysis become available, we shall, with the Tribunal's permission, supplement this evidentiary statement.

of them. None of these unidentified-ownership works are Spanish-language works. Therefore, none of the performed works in this sample could be claimed by ACEMLA or any of its alter egos.

#### B. 1984 Trade Charts

We attach, as Exhibits 2 and 3, analyses of the Billboard trade charts and RePlay jukebox trade charts for 1984.

Our combined repertories accounted for 100% of the 1984 Billboard Hot 100, Adult Contemporary, and Country charts, and 99.6% of the Billboard Black charts.<sup>6</sup> Our combined repertories accounted for 100% of the RePlay jukebox charts in 1984.

#### C. 1984 Licensing Revenues

For 1984, the combined ASCAP, BMI and SESAC performing rights licensing revenues totalled about \$350 million.

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<sup>6</sup> None of the three songs on the Billboard Black charts which were not in our repertories are in the Spanish language, and therefore they could not be claimed by ACEMLA or its alter egos.



IV. EVIDENCE FROM PRIOR PROCEEDINGS OF THE  
STRENGTH OF THE ASCAP, BMI AND SESAC  
SPANISH-LANGUAGE REPERTORIES

We particularly highlight the following affirmative evidence of our joint entitlement from the consolidated 1982 and 1983 jukebox distribution proceedings relating to our Spanish-language repertories:

- Lists of popular Spanish-language songs in our combined repertories, Joint Statement of A/B/S, dated March 14, 1984 (1982 list); Joint Evidentiary Statement of A/B/S, December 4, 1984 (1983 list).
- Lists of foreign performing rights societies whose Spanish-language repertories are licensed in the United States by ASCAP, BMI and SESAC, Joint Statement of A/B/S, dated March 14, 1984; Joint Evidentiary Statement of A/B/S, December 4, 1984.
- Lists of most-performed Spanish-language works in the combined ASCAP, BMI and SESAC repertories for 1982 and 1983, Response of A/B/S, dated August 9, 1985.
- Written statement, pp. 3-4, Exh. 9, and oral testimony, Tr. 84-86, of Ron Anton on importance of ASCAP, BMI and SESAC Spanish-language repertories
- Written statement, p. 4, and oral testimony, Tr. 29, of Gloria Messinger on strength of the ASCAP, BMI and SESAC repertories in Spanish-language music.
- Written statement, pp. 2-3, and oral testimony, Tr. 143-145, of Alan Smith on strength of the ASCAP, BMI and SESAC repertories in Spanish-language music.

V. NEW EVIDENCE OF THE STRENGTH OF THE ASCAP, BMI  
AND SESAC SPANISH-LANGUAGE REPERTORIES IN 1984

Supplementing the lists of popular and most-performed Spanish-language works in our combined repertories referred to above, which we introduced in the consolidated 1982 and 1983 jukebox distribution proceedings, we attach as Exhibit 4 a list of Spanish-language works in our combined repertories which first appeared in 1984. We note that our 1982 and 1983 lists contained a great many "standard" works which were also popular and heavily performed in 1984.

VI. THE QUESTIONS OF ACEMLA'S STATUS  
AND ENTITLEMENT, IF ANY

The record of the consolidated 1982 and 1983 jukebox distribution proceedings is replete with evidence that ACEMLA was no more a "performing rights society" in 1984 than it was in 1982 and 1983. We are awaiting ACEMLA's evidentiary statement in this proceeding concerning this issue. We expect that the Tribunal will then allow us to introduce evidence in rebuttal to ACEMLA's claim that it qualified as a "performing rights society" in 1984.

Similarly, in the consolidated 1982 and 1983 jukebox distribution proceedings, we introduced considerable evidence addressing the question of entitlement (or lack thereof) of ACEMLA or its alter egos, Latin American Music and Latin American Music Co., Inc. We are awaiting ACEMLA's evidentiary

statement in this proceeding concerning this issue. Again, we expect that the Tribunal will then allow us to introduce evidence in rebuttal to this claim.

Respectfully submitted,

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Attorney for SESAC, Inc.

Dated: May 15, 1986

EXHIBIT 1

1984 JUKEBOX PERFORMANCES SHOWN BY  
ASCAP AND BMI INSPECTIONS

	<u>Number</u>	<u>%</u>
Total performances	4,363	100.00
Performances of ASCAP, BMI or SESAC works	4,352	99.75
Performances of works whose ownership is unidentified	11	0.25

Number of inspections = 159

EXHIBIT 2  
ANALYSIS OF BILLBOARD CHARTS

1984

<u>Chart Name</u>	<u>No. of Weekly Listings</u>	<u>No. of Annual Listings</u>	<u>No. of Listings Licensed By ASCAP, BMI &amp; SESAC</u>	<u>No. of Listings Not Licensed By ASCAP, BMI &amp; SESAC</u>	<u>Percent Licensed By ASCAP, BMI &amp; SESAC</u>
Hot 100	100	5200	5200	0	100%
Country	100	5200	5200	0	100%
Black	100	5200	5177	23*	99.6%
Adult Contemporary	50 through week of 10/13/84 (41 weeks) 40 thereafter (11 weeks)	2490	2490	0	100%

<u>*Song Title</u>	<u>Period on Chart</u>	<u>No. Weeks on Chart</u>
Always	4/7-6/23/84	12
Sugar Baby	8/11-9/22/84	7
50/50 Love	10/27-11/17/84	4
Total listings		<u>23</u>

## EXHIBIT 3

ANALYSIS OF REPLAY CHARTS

1984

<u>Chart Name</u>	<u>No. of Monthly Listings</u>	<u>No. of Annual Listings</u>	<u>No. of Listings Licensed By ASCAP, BMI &amp; SESAC</u>	<u>No. of Listings Not Licensed By ASCAP, BMI &amp; SESAC</u>	<u>Percent Licensed By ASCAP, BMI &amp; SESAC</u>
Pop	30	360	360	0	100%
Country	20	240	240	0	100%
R&B	20	240	240	0	100%

## EXHIBIT 4

SPANISH-LANGUAGE TITLES FIRST APPEARING IN 1984

<u>TITLE</u>	<u>WRITER(S)</u>	<u>PUBLISHER(S)</u>	<u>ARTIST(S)</u>
Abrazame (In Your Arms)	Michael Masser Linda Epstein	Almo Music Corp. Decreed Music Publishing Co. Music Corp. of America	Jose Feliciano
Aceptame Como Soy	Jose Maria Napoleon	Golden Sandss Enterprises, Inc.	Yolandita Monge
Azuquita Pa'l Cafe	Va Zquez Flores Perin	Cartagena Pub- lishing	El Gram Cambo
Caray	Alberto Aguilera - Valdez	U.S. Arabella Music Pub., Inc.	Juan Gabriel
Cuando Pienso En Ti	Edmundo Aberastudy Azurdjy	Claudio Roman Edition	Jamin Court
Dejame En Libertad	Edmundo Aberastudy Azurdjy	Claudio Roman Edition	Jamin Court
Frente Al Espejo	Jose Luis M. Perales	Barnegat Music Corp. Hispavox Mus. Edic.	Raphael
Hechicera	Florentino Padron	Unimusica, Inc.	Oscar D'Leon
Historia	Gilberto Velez	West Indies Music Co.	Edwin Eugenio
Juntos	Antonio De Jesus	Irving Music, Inc.	Antonio De Jesus
La Doncella	Manuel de Jesus Alcantara	Quisqueya Pub- lishing	Los Nietos del Rey
La Gringa	Henry A. Rodriguez	Afuera Music Publ.	Bobby Valentin

La Loca	Maria Cuisa Diego	Almo Music Corp.	Maria Conchita
La Noche Y Tu	Bob Seger Juan Carlos Canderon Lopez	N/A	Dyango/Sheena Easton
Me Fui Enamorando De Ti	Edmundo Aberastudy Azurdjy	Claudio Roman Edition	Claudio Roman
Me Va Me Ma	Bernerdi R.E. Ceratto	Canciones del Mundo Editorial Intersong USA, Inc.	Julio Iglesias
Motorcycle Musical  (Subete A Mi Moto)	Carlos Villa-de-la- Menudo Dreamer Edgardo Diaz Mary Lynne Murillo Pagan	Torre	Editora Padosa, Inc.
Ni Llanto Ni Lamento	Tomas T. Sanchez	MSQ Music	Costa Brava
Noche de Copas	Juan Carlos Calderon	Irving Music, Inc.	Maria Conchita
No Se	Edmundo Aberastudy Azurdjy	Claudio Roman Edition	Claudio Roman
No Sirvo Parati	Garcia R. Perez Botija	Larry Spier Gill Triva Music Corp.	Rocio Durcal
Oye	Rene Touzet	Unimusica, Inc.	July Mateo
Palo Pa Rumba	Eddie Palmieri	F.A.F. Publishing Co., Inc. Gabrielle One Music Enterprises, Inc.	Eddie Palmieri
Querida	Alberto Aquilera- Valdez	Arabella Mexico	Juan Gabriel
Que Suegra	Ismael Diaz	West Indies Music Co.	Fantasia Bruta
Quien Piensa En Mi	Gonzalo Fernandez Benavidez	Hispavox Mus. Edic. Neuvas Ediciones S.A. Barnegat Music Corp.	Gonzalo

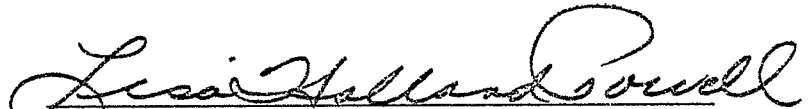


Sabes A Chocolate	Carlos Villa-de- la-Torre Alcaide Alejandro Monroy	Editora Musical Padosa, Inc.	Menudo
Te Esta Pasando Igual	Anthony Rios	Unimusica, Inc.	Sophy
Ven	Jose Maria Puron- Picatoste Eduardo Leiva-Rosell Juan Velon de Francisco	April Music, Inc. Silivet Corp. S.A.	Jose Luis Rodriguez
Vete De Una Vez	Edwin E. Gonzalez	West Indies Music Co.	Edwin Eugenio
Vivir	Donna Vanoutrive Hightower & Candon Daniel De La Campa	Peter David Music Co.	Daniel Candon De La Campa
Voy A Conquistate	Jose Maria Puron- Picatoste	April Music, Inc. Silivet Corp. S.A.	Jose Luis Rodriguez
Y Fuimos Dos	Jose Luis M. Perales	Music Corp. Hispavox Mus. Edic.	Barnegat Raphael
Y No Hago Mas Na	Jose Juan Garcia	Cartagena Pub- lishing	El Gran Combo

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
"Joint Evidentiary Statement of The American Society of  
Composers, Authors and Publishers, Broadcast Music, Inc.  
and SESAC, Inc." was served, via first-class mail, postage  
prepaid, this 15th day of May, 1986, to the following:

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March 7, 1986

HAND DELIVERED

Mr. Edward W. Ray  
Acting Chairman  
Copyright Royalty Tribunal  
1111 20th Street, N.W.  
Suite 450  
Washington, D.C. 20036

Re: 1984 Jukebox Royalty Distribution Proceedings  
Docket No. 85-1-84JD

Dear Chairman Ray:

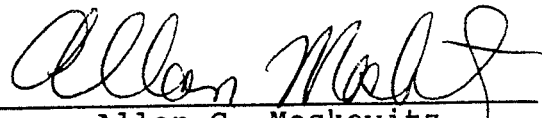
On behalf of Asociacion de Compositores y Editores de Musica Latinoamericana, we are filing herewith an original and five copies of its "Opposition" to the "Motion for Procedural Ruling" filed by the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc. with respect to the above-captioned proceeding.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

SHRINSKY, WEITZMAN & EISEN, P.C.

By

  
Allan G. Moskowitz

Enclosures